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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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Review by Consorcio de Escuelas
y Bibliotecas de Puerto Rico of Decisions of
Universal Service Administrator

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.

CC Docket No. 97-21

Colegio San Felipe
Colegio San Antonio
Academia Primaria Adventista
Academia Adventista Metropolitana
Liceo Aguadillano
Academia Adventista del Centro Ramón Rivera Pérez
Academia de Enseñanza Moderna, Inc.
Saint Patrick's Bilingual School
Biblioteca Pública Camuy
Biblioteca Pública Barceloneta
Biblioteca Pública Adjuntas
Biblioteca Municipal de Area Corozal
Biblioteca Municipal Caguas
Biblioteca Municipal Cayey
Biblioteca San Sebastián
Biblioteca Pública San Lorenzo
Biblioteca Pública Manuel Guzmán Rodríguez
Biblioteca Pública Guayama
Biblioteca Pública Coamo
Biblioteca Pública Cantero Rosa M. Sánchez
Biblioteca Pública Clemencia Philemon
Biblioteca Pública Guayanilla
Biblioteca Pública de Culebra
Biblioteca Pública Peñuelas
Biblioteca Pública Nemesio R. Canales
Academia Presbiteriana Reverendo Juan E. Mercado
Biblioteca Municipal Quebradillas
Biblioteca Municipal de Boquillas

BIN # 159193
BIN # 205387
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BIN # 223675

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Biblioteca Municipal Áurea M. Pérez)	BIN # 201796
Biblioteca Municipal Francisco Álvarez Marrero)	BIN # 201228
Biblioteca Pública Augusto Malaret	)	BIN # 199665
Biblioteca Pública de Lajas	)	BIN # 199647
Biblioteca Pública Hatillo	)	BIN # 199638
Biblioteca Pública Camuy	)	BIN # 199579
Fajardo Community Private School	)	BIN # 200066
Biblioteca Pública Pedro M. Alomar	)	BIN # 199690
Biblioteca Pública Alejandrina Quiñones	)	BIN # 199620
Biblioteca Pública José G. Benítez	)	BIN # 199698
Biblioteca Pública Villalba	)	BIN # 199699
Biblioteca Pública Yauco	)	BIN # 199702
Biblioteca Pública Municipal Computarizada de Naranjito	)	BIN # 223718
Colegio Emmanuel, Inc.	)	BIN # 200611
Colegio Nacional	)	BIN # 200546
Biblioteca Pública de Camuy)	BIN # 199618
Biblioteca Electrónica Municipio Autónomo de Carolina)	BIN # 199619
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Biblioteca Pública Barceloneta)	App. No. 233178
Biblioteca Pública Adjuntas)	App. No. 234495
Biblioteca Pública San Lorenzo	)	App. No. 236812
Biblioteca Pública Guayama	)	App. No. 236689
Academia Primaria Adventista	)	App. No. 228886
Biblioteca Pública Camuy	)	App. No. 237339
Biblioteca Pública Caguas, Dr. Pedro Albizu Campos	)	App. No. 236507
Biblioteca Electronica Municipio Autonomo de Carolina	)	App. No. 260589
Biblioteca Pública de Culebra	)	App. No. 237506
Biblioteca Pública Peñuelas	)	App. No. 244332
Biblioteca Pública Salinas, Clemencia Philemon	)	App. No. 244170
Biblioteca Municipal de Corozal	)	App. No. 237386
Biblioteca Pública Guayanilla	)	App. No. 234409
Biblioteca Pública Ceiba, Alejandrina Quinones	)	App. No. 236715
Liceo Aguadillano	)	App. No. 228839
Biblioteca Pública Jayuya, Nemesio R. Canales	)	App. No. 237466
Colegio San Felipe	)	App. No. 229093
Colegio Emmanuel, Inc.	)	App. No. 232226
Biblioteca Pública Santa Isabel, Pedro M. Alomar	)	App. No. 237746
Biblioteca Municipal de Cayey	)	App. No. 237615
Biblioteca Pública Hatillo	)	App. No. 237581
Biblioteca Pública Lajas	)	App. No. 237564
Biblioteca Pública Sabana Grande, Augusto Malaret	)	App. No. 237551
Biblioteca Pública Camuy, Barrio Quebrada	)	App. No. 236860
Colegio Nacional	)	App. No. 232314
Biblioteca Pública Yauco	)	App. No. 237499
Biblioteca Pública Villalba	)	App. No. 236778

Biblioteca Pública Vieques, Jose G. Benitez	)	App. No. 237716
Fajardo Community Private School	)	App. No. 232444
Biblioteca Municipal de Manati A	)	App. No. 236736
Biblioteca Municipal Las Piedras, Aurea M. Perez	)	App. No. 243153
Biblioteca Municipal de Quebradillas	)	App. No. 260161
Biblioteca Municipal de Boquillas	)	App. No. 244127
Academia de Enseñanza Moderna, Inc.	)	App. No. 232429
Academia Adventista Metropolitana	)	App. No. 228978
Academia Presbiteriana Reverendo Juan E. Mercado	)	App. No. 231427
Colegio San Antonio	)	App. No. 228813
Biblioteca Pública de Añasco, Manuel Guzman Rodriguez	)	App. No. 233108
Biblioteca Pública San Sebastian, Lic. Eduardo Negron B.	)	App. No. 244244
Academia Adventista del Centro, Ramon Rivera Perez	)	App. No. 228164
Biblioteca Pública San Juan, Cantera Rosa M. Sanchez	)	App. No. 236946
Biblioteca Pública Coamo, Coamo, Puerto Rico	)	App. No. 237300
Saint Patrick's Bilingual School	)	App. No. 232457
Biblioteca Pública Municipal Computarizada de Naranjito)	App. No. 260232
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Academia Adventista del Noroeste)	BIN # 197675
Academia Adventista del Norte - Arecibo)	BIN # 197735
Academia Adventista de Maunabo	)	BIN # 200001
Academia Adventista Metropolitana	)	BIN # 200453
Academia Adventista de Mucarabones	)	BIN # 200631
Academia Adventista de Naguabo	)	BIN # 200002
Academia Cristiana Un Nuevo Amanecer	)	BIN # 225255
Academia Paraiso de Dorado	)	BIN # 199798
Academia Regional Adventista Central - Caguas	)	BIN # 199854
Academia Regional Adventista del Norte - Vega Baja	)	BIN # 199993
Academia Regional Adventista del Sur	)	BIN # 200263
Academia Santa Rosa de Lima	)	BIN # 158956
Academia Santo Tomas de Aquino Elemental - Bayamon	)	BIN # 200583
Colegio Bilingue Light of the Children	)	BIN # 205527
Colegio Catolico Notre Dame Elemental - Caguas	)	BIN # 199857
Colegio Congregacion Mita, Inc.	)	BIN # 222553
Colegio Inmaculada Concepcion	)	BIN # 198181
Colegio Nuestra Senora Del Carmen	)	BIN # 158961
Colegio Nuestra Senora del Rosario - Vega Baja	)	BIN # 198187
Colegio Nuestra Senora del Rosario - Ciales	)	BIN # 158867
Colegio Sagrada Familia - Corozal	)	BIN # 198178
Colegio San Rafael - Quebradillas	)	BIN # 158943
Colegio Santa Rosa Elemental - Bayamon	)	BIN # 200582
Colegio San Juan Bautista - Orocovis	)	BIN # 159097
Colegio San Miguel Elemental - Utuado	)	BIN # 198185
Colegio San Miguel Secundario - Utuado	)	BIN # 198186
Biblioteca Electronica Municipal de Aibonito	)	BIN # 223688

Biblioteca Municipal de Bayamon Dr. Agustin Stahl)	BIN # 223698
Biblioteca Municipal de Bayamon)	BIN # 223699
Biblioteca Municipal Canovanas Ernesto Cora Vega)	BIN # 223713
Biblioteca Municipal de Catano Alberto Davila Fuentes)	BIN # 223676
Biblioteca Municipal de Cortes, Manati)	BIN # 223677
Biblioteca Municipal de Guaynabo)	BIN # 223701
Biblioteca Municipal de Juncos, Jose M. Gallardo)	BIN # 223704
Biblioteca Municipal de Montebello, Manati)	BIN # 223679
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Biblioteca Publica Aguas Buenas)	BIN # 199610
Biblioteca Publica de Area Aibonito)	BIN # _____
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Biblioteca Publica Barceloneta)	BIN # 199615
Biblioteca Publica Ciales)	BIN # 199621
Biblioteca Publica Patillas, Pedro Albizu Campos)	BIN # 199661
Biblioteca Publica Fajardo)	BIN # 199627
Biblioteca Publica Yabucoa)	BIN # 199701
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Biblioteca Publica Humacao Antonio A. Roig)	BIN # 199642
Biblioteca Publica Las Marias)	BIN # 199649

To: Common Carrier Bureau

SUPPLEMENT TO REQUESTS FOR REVIEW AND WAIVER

The above-referenced applicants ("Applicants") and the Consorcio de Escuelas y Bibliotecas de Puerto Rico ("CEBPR"), by its attorneys, hereby file this Supplement to their pending "Requests for Review and Waiver" of the actions of the School and Libraries Division ("SLD") of the Universal Service Administrative Company rejecting the above-referenced applications for Year 4 funding. The Requests were filed on August 23, 2001, September 7,

2001, December 27, 2001, and January 25, 2002.¹

BACKGROUND

The above-referenced applications for funding Year 4 were rejected by the SLD solely because the mailing of the Block 6 Certifications and Item 21 Attachments were not postmarked before the end of the filing window ending January 18, 2001. In addition to showing that the application of this new filing procedure and deadline for Year 4 was unlawfully applied under 44 U.S.C. § 3507(h)(3) (1991 & Supp. 2001),² the Applicants and CEBPR further requested, to the extent necessary, a waiver of Section 54.507(c) of the Commission's Rules, 47 C.F.R. § 54.507(c), and any other FCC rule or SLD policy to permit the consideration of the applications. This supplement further addresses the basis for waiver of the new filing requirement under firmly established Commission precedent.

I. THE BASIC PRINCIPLES SET FORTH IN THE NAPERVILLE COMMUNITY DECISION MANDATE GRANT OF A WAIVER.

In *Naperville Community*, the full Commission waived SLD minimum processing requirements and directed the SLD to consider the applications where: (1) the failure to comply with the minimum processing requirements was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application was otherwise substantially complete.³ The

¹ Four separate Requests for Review and Waiver have been filed due to the different dates on which particular applications have been rejected by SLD. In each instance, CEBPR has filed a timely Request for Review and Waiver of those rejections.

² Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3507(h)(3).

³ Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board (continúa...)

facts of this case fall well within the basic principles established in *Naperville Community* mandating that a waiver be granted.

A. The Request For Information Was A First-time Information Gathering Requirement Which, Because Of The Way In Which It Was Implemented, Led To Confusion On The Part Of The Applicants.

Prior to the Year 4 application process, the deadline by which the paper documents backing up the electronic filing had to be received by SLD was later than the deadline for the electronic filing of the FCC Form 471, so that applicants had one or two days after the close of the window to mail their paper documents.⁴ For instance, in funding Year 3, the filing window for FCC Forms 471 closed on January 19, 2000, while the filing deadline for signed Block 6 certifications was January 31, 2000.⁵

However, for funding Year 4, the SLD established new and more stringent requirements mandating that the mailing of the paper documents be postmarked by the close of the filing window.⁶ Despite the material nature of the change, the SLD failed to secure required OMB approval for the new information gathering requirement or inform applicants in the Instructions to the Form 471 application and the form itself. Rather, the OMB-approved Instructions for Year

³(...continuacion)

on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-203343, CC Docket Nos. 96-45 and 97-21, *Order*, 16 FCC Rcd 5032, ¶ 16 (Feb. 27, 2001) (*Naperville Community*).

⁴

See <http://www.sl.universalservice.org/whatsnew/012000.asp#extended> (SLD web site, What's New, January 2000) (noting that for Funding Year 3, the filing window for FCC Forms 471 closed on January 19, 2000, while the deadline for certifications was initially January 26, 2000, later extended to January 31, 2000).

⁵

Id.

⁶

<http://www.sl.universalservice.org/whatsnew/112000.asp#110200> (SLD web site, What's New (November 2000)).

4 just paralleled the Year 3 Instructions:

Electronic Filing Instructions: You may complete and submit the Form 471 by filing the Form electronically online at the SLD Web Site, <www.sl.universalservice.org>. If filing your Form 471 electronically, you must also complete and mail to the SLD the following documents in order to successfully complete the submission of your Form 471 application within the application filing window:

- the Item (21) description(s) of services, and
- a paper copy of the Block 6 Certification, completed and signed with an original ink signature . . .

The only difference between the OMB-approved Instructions for Year 3 and those for Year 4 is the addition of the phrase “within the application filing window” in the Year 4 instructions (the new language is underlined in the above quote for emphasis). Nowhere did the Instructions indicate that mailing by the applicant, rather than receipt by SLD, was the new filing standard. Nowhere did the Instructions for Year 4 state that the paper documents must be postmarked by the close of the filing window. The addition of the phrase “within the application filing window” simply did not tell applicants that the SLD had implemented a new and more stringent filing requirement.

Not only did the SLD’s imposition of the new information gathering requirements through non-OMB approved website publications contravene 44 U.S.C. §3507(h)(3), but it created a substantial potential for confusion among applicants. In net effect, two different and conflicting sets of directions were circulated by SLD, one (the OMB-approved Instructions) setting forth the same procedures followed in Year 3, and the other (not approved by OMB) substantially changing the filing procedure.

In *West Las Vegas Schools*, a waiver of the filing window deadline was granted because the incorrect mailing address was posted on the SLD’s web site resulting in the late filing of the

applicant's FCC Form 471.⁷ This case presents an even more egregious situation of confusing and erroneous SLD instructions. Instructions were circulated that were inaccurate and led to confusion to the detriment of the applicants. As in *West Las Vegas Schools*, incorrect instructions "contributed to the untimely filing" of the paper documents.⁸ Therefore, CEBPR and the Applicants should not be prejudiced by the SLD's imposition of a first-time requirement that led to the confusion.

B. No Information Necessary For The Initial Processing Of The Applications Was Omitted From The Timely Filed Electronic Forms.

With CEBPR's timely filing of all electronic 471 Forms, the SLD had all of the information it needed to commence the initial processing of the applications. All relevant information was included in each of the electronic applications, including the name and mailing address of the applicant along with the name of a contact person, data on the impact of the services ordered, discount calculation worksheets, and information about the eligible services ordered. The brief absence of the information contained in paper Block 6 and Item 21, which arrived at SLD only a few days after the close of the window, clearly did not deprive the SLD of the opportunity to promptly process the applications.

C. The Application Are Substantially Complete.

As indicated above, this is not a situation in which the application was incomplete or relevant information was not available to the SLD. Other than the information contained in

⁷ Request for Review of the Decision of the Universal Service Administrator by West Las Vegas Schools, Las Vegas, NM, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-196708, CC Docket Nos. 96-45 and 97-21, DA 01-2330, *Order*, 2001 FCC Lexis 5448 (Com. Car. Bur. 2001) (*West Las Vegas Schools*).

⁸ See *West Las Vegas Schools*, 2001 FCC Lexis 5448, ¶ 5.

Block 6 and Item 21, all relevant information necessary for the processing of the applications in question was timely filed through the electronic filing process. With the addition of the Block 6 and Item 21 paper information, which arrived at the SLD a few days later, all applications were complete.

CONCLUSION

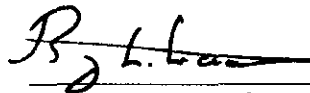
For the reasons set forth in the previously filed Requests for Review and Waiver, based on the standards set forth by the Commission's decision in *Naperville Community*, the Commission should direct the SLD to accept the applications as having been timely filed during the SLD's filing window for funding Year 4.

Respectfully submitted,

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February 28, 2002

CERTIFICATE OF SERVICE

I, Edgar Class III, hereby certify that on February 28, 2002, I caused copies of the foregoing **"Supplement to Requests for Review and Waiver"** to be hand delivered to the following:

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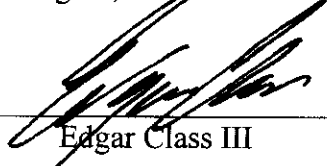
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*Via U.S. Mail